Völkerrechtsblog
Der Blog des Arbeitskreises junger Völkerrechtswissenschaftler*innen

ALTERNATIVE DISPUTE RESOLUTION SYMPOSIUM

Strengthening the means of (international) law enforcement

Symposium on alternative dispute resolution

CRISTINA VERONES — 30 June, 2016

Today, a vast array of treaties exists, both multilateral and bilateral. They regulate almost every aspect of human interaction and cover such diverse fields as the environment, trade, outer-space, human rights, organized crime and terrorism. For example, over 560 multilateral treaties are deposited with the UN Secretary General alone and more than 2000 bilateral investment treaties exist.

The majority of these treaties are concerned with standard setting, that is, the creation of (new) norms. However,

procedural issues such as implementation and enforcement are often neglected. Yet, in order to have a meaningful international legal system and legal certainty, existing rules – be they treaty or customary rules – must be respected in the long run and non-compliers should be forced or at least induced to come back into compliance. Enforcement is essential: rules with no possibility of being enforced are seldom effective and might even lose credibility. In this regard, it is not enough to count on the goodwill of States to become active in ensuring the proper application of international norms because they want to be good members of the international community.

The disadvantages of traditional courts

The first option that comes to one's mind when confronted with the question how divergences on the interpretation or application of international norms can be solved are (international) courts. Intuitively, a court ruling is seen as a legally sound way of ending a legal dispute and it is also the means with which most people might be familiar, due to their experiences in national systems, both personal and from media coverage.

However, court rulings might not be appropriate for all cases and present several draw backs. One serious disadvantage is certainly the time and money necessary to go through such a case. For example, at the end of 2015 the number of pending cases at the European Court of Human Rights stood at over 64'000 and while the Court endeavors to deal with cases within three years, many may take longer.

Also, courts are not necessarily appropriate to solve all types of conflict. For example, judges often have no technical scientific expertise and thus, complex scientific cases – such

as environmental cases – might not be solved satisfactorily by traditional courts.

Alternative means of dispute settlement and their advantages

It is well known that there are alternatives to court proceedings. Together these means are often termed "alternative dispute resolution" (ADR). Yet, despite its increased popularization in recent years, what means are hidden behind this acronym and how they help solve disputes, is not often talked about or analyzed in public. The best known examples of ADR are arbitration and mediation, but there are also some other possibilities such as fact-finding or action through an ombudsperson.

Means of alternative dispute resolution have several advantages in common, although they vary greatly as to their form and procedure. Nevertheless, ADR procedures are usually shorter and cheaper than standard court proceedings. In that sense, they ensure that more people have access to justice, since not everyone can afford a lengthy trial in front of a court. Furthermore, ADR allows the parties to be in control of the proceedings, allowing them to find more flexible, sometimes even creative solutions to their problem. This includes selecting the right – the "appropriate" – method among the many possibilities termed as ADR – in one case arbitration might be most appropriate, in another it is fact-finding. Also, it enables parties to focus on a specific issue instead of legal rights and obligations only and it facilitates the inclusion of non-legal experts such as scientific professionals among the third parties helping to achieve a result.

Discussing alternative dispute resolution

Alternative dispute resolution is no longer relegated to the back of the (international) dispute settlement, but plays an increasingly active and important role – with all its advantages and drawbacks. It is therefore important, that legal practitioners and scholars alike are aware of and discuss this phenomenon. The upcoming symposium on ADR intends to be a starting point.

As a way of introduction, the first contribution places ADR in its historical context and explains in detail what it means today. Then, we explore ADR from different angles in three areas: a discussion on the pros and cons of investment arbitration, followed by peace mediation and the importance of norms in this process, ending with a practical insight on mediating environmental disputes.

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